(1983) 04 BOM CK 0035

Bombay High Court

Case No: Appeal No. 307 of 1983

K. Subramanian, Ito and another		APPELLANT
	Vs	
Siemens India Ltd. and another		RESPONDENT

Date of Decision: April 20, 1983

Acts Referred:

- Income Tax Act, 1961 - Section 141

Citation: (1983) 36 CTR 197 : (1985) 156 ITR 11 : (1983) 15 TAXMAN 594

Hon'ble Judges: Sujata V. Manohar, J; M. Jagannatha Rao, J

Bench: Division Bench

Judgement

Kania, J.

This is an appeal by the ITO from the judgment of Madon J. (as he then was) which comes before us for admission. We admit the appeal merely because we are informed that there is no earlier judgment of this court or any other court on the construction of s. 7 of the Companies (Profits) Surtax Act, 1964 (7 of 1964), which has been construed in the said judgment appealed against. We may, however, make it quite clear that prima facie we are completely in agreement with the construction put by the learned trial judge on s. 7 of the said Act. The earned judge has carefully set out six features of a provisional assessment under s. 7 of the said Act and held that in view of these features, the departure made in s. 7 of the said Act from the language used in s. 141 of the I.T. Act, 1961 (deleted w.e.f. from 1-4-1971), though it may not confine the ITO only to the position as shown in the return, does not at the same time authorise him to reject that return, in whole or in part, or to refuse t accept the factual position shown therein or the legal position as these prevailing. We may point out that after laying own the above proposition, the learned judge has gone on to hold as follows :

So far as the legal position is concerned, the ITO would be bound by a decision of the Supreme Court as also by a decision of the High Court of the State within whose jurisdiction he is (functioning), irrespective of the pendency of any appeal or special

leave application against that judgment. He would be bound by a decision of another High Court on the point, because not to follow that decision would be to cause grave prejudice to the assessee. Where there is a conflict between different High Courts, he must follow the decision of the High Court within whose jurisdiction he is (functioning), but if the conflict is between decisions of other High Courts, he must take the view which is in favour of the assessee and not against him. Similarly, if the ITAT has decide a point in favour of the assessee, he cannot ignore that decision and take a contrary view, because that would equally prejudice the assessee. He can, however, reject claims which are clearly and indisputably untenable and about which a different view is not rationally possible.

We may make it clear that, in our opinion, the ITO in making assessment under s. 7 of the said Act is clearly bond by the decision of a single judge or a Division Bench of the court within whose jurisdiction is operating as well as, of course, a decision of the Supreme Court. The mere fact that an appeal has been preferred against such decision or is pending can make no difference whatever to the binding nature of that decision, so far as the ITO is concerned. In view of this, although it is not necessary, we may make it perfectly clear that the decision appealed against shall continue to be binding on all ITOs operating within the jurisdiction of this court for the purposes of making provisional assessments under s. 7 of the said Act, unless a contrary view is taken by a Division Bench of this court or the Supreme Court.